

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CSX Transportation, Inc., : Case No. 1:15-cv-376

Plaintiff, :

vs. :

Vincent Stevenson d/b/a Icon Works; Gina George aka Gina Ristick; Lego Demolition, LLC; Mitch G. Stevenson; Miller Bros. Cons./Demolition LLC; Steven G. Stevenson II; and Patricia Stevenson, :

Defendants.

ORDER

Plaintiff CSX Transportation, Inc. has filed two motions seeking entry of a default judgment against all of the named Defendants, with the exception of Patricia Stevenson. The first motion (Doc. 10), seeks a judgment against Lego Demolition, LLC, and Mitch G. Stevenson. The second motion seeks judgment against Vincent Stevenson d/b/a Icon Works, Gina George a/k/a Gina Ristick, Miller Brothers Construction/Demolition LLC, and Steven G. Stevenson II. (Doc. 21) Each of these Defendants has been properly served, have not responded or filed an appearance in the case, and the Clerk has entered each of their defaults.

CSX contends that its complaint and its claims against each of these Defendants is for a sum certain, or one that can be made certain, in the amount of \$428,459.82. Both motions are supported by the Declaration of Ed Berlin, who is the Manager of Accounts Receivable and Litigation for CSX. As is alleged in the complaint and specifically verified by Mr. Berlin, CSX entered into agreements with Miller Brothers

Construction, Lego Demolition, and Vincent Stevenson. For each of these contracts, the signatory defendant obtained credit from CSX in order to buy scrap metal from the company at various CSX sites. After the contracts were signed and the metal removed, the signatory defendants failed to pay CSX pursuant to the terms of the written contracts. The contracts were for the sale of scrap metal located in separate CSX facilities in Kentucky and Florida.

CSX seeks a judgment against each of the signatory parties to the contracts. It also seeks judgment against all of the defaulting Defendants, alleging that they are jointly and severally liable for the entire unpaid amount for the scrap metal contracts. The Court accepts Mr. Berlin's declaration as to the dates and amounts of each of the agreements. The Court requested further briefing to establish the basis for CSX's allegation of joint and several liability against all of the defaulting Defendants.

In its supplemental brief, CSX notes that its complaint in this case specifically alleges facts concerning the relationships between the signatory parties and the other Defendants. Specifically, as alleged in the complaint, Vincent Stevenson operates under the trade name "Icon Works," and is the son of Mitch and Patricia Stevenson, as well as the brother of Steve Stevenson. Lego Demolition is owned and operated by Mitch Stevenson, who operated Lego from a residence on Hampton Bay in Mason, Ohio which is owned by his wife Patricia. Vincent Stevenson's principal address is 8483 Fields Ertel Road, Cincinnati Ohio, the same address as that of Gina George, a/k/a Gina Ristick, and of Steve Stevenson.

Icon Works LLC entered into the August 5, 2014 contract with CSX. Gina George signed the Icon Works credit application, which falsely listed Gina as the owner

of Icon Works. Lego Demolition entered into the June 3, 2014 contract with CSX after submitting false financial statements signed by a "Mr. Stout." CSX entered into another contract with Lego on June 19, 2014 for the purchase of scrap metal at CSX's Hawthorne Project, relying on the same false financial statements signed by a "Mr. Stout." After CSX received complaints about Lego's failure to pay contractors, Mitch Stevenson contacted CSX and acknowledged that Lego owed money to CSX for the scrap metal. Mitch falsely told CSX that "Mr. Stout" had handled the Hawthorne Project but had since left the company. CSX later discovered that Stout ended his employment with Lego in February 2014, before either of the contracts were negotiated and signed. CSX alleges that Mitch Stevenson fraudulently submitted the credit applications and had no intention of paying CSX as required by the contract.

Miller Brothers Construction/Demolition was formed by Steve Stevenson in 2011, and was never owned or operated by anyone named Miller. CSX alleges that Miller Brothers operates out of the Fields Ertel Residence where Steve's brother Vincent resides and operates Icon Works. Miller Brothers' official address is a rentable post office box at a UPS store located in Mason, Ohio. CSX sold scrap metal to Miller Brothers in two occasions between December 2012 and February 2013. Steve Stevenson made a partial payment of the balance due but has refused to pay the rest of the agreed contract price.

In the seventh cause of action, CSX alleges that all of the defaulting Defendants engaged in a civil conspiracy to obtain credit from CSX under false pretenses. Each of the Defendants was aware of the schemes engaged in by the others with respect to the specific scrap metal contracts. Mitch Stevenson, Steve Stevenson, and Vincent

Stevenson each used their corporate entities and the false illusion of the existence of proper corporate entities to obtain credit from CSX under false pretenses. CSX argues that the well-pleaded factual averments in its complaint are deemed admitted upon the entry of default against the Defendants. Fed. R. Civ. Proc. 8(b)(6) clearly provides that an allegation (other than the amount of damages) is admitted if it is not denied in a responsive pleading. And those factual allegations are sufficient under Ohio law for entering judgment against the defaulting Defendants for civil conspiracy.

The Ohio Supreme Court has defined the tort of civil conspiracy as "a malicious combination of two or more persons to injure another in person or property, in a way not competent for one alone, resulting in actual damages." Williams v. Aetna Fin. Co., 83 Ohio St.3d 464, 475, 700 N.E.2d 859 (Ohio 1998), quoting Kenty v. Transamerica Premium Ins. Co., 72 Ohio St.3d 415, 419, 650 N.E.2d 863, 866 (Ohio 1995). An underlying unlawful act must be shown before a conspiracy claim can succeed. Here, CSX alleges multiple unlawful acts by the defaulting Defendants, including false representations about the corporate entities and their financial status, and personal guarantees provided by individuals who falsely represented their relationship to or status within those entities. And Ohio law is clear that joint and several liability is properly imposed upon co-conspirators, as the acts of co-conspirators are attributed to each of them. Williams v. Aetna Fin. Co., 83 Ohio St.3d at 476.

For these reasons, the Court is satisfied that the record in this case is more than adequate to support entry of a default judgment without need for an evidentiary hearing. A default judgment is hereby entered in favor of Plaintiff and against Vincent Stevenson d/b/a Icon Works, Gina George a/k/a Gina Ristick, Lego Demolition, LLC, Mitch G.

Stevenson, Miller Brothers Construction/Demolition LLC, and Steven G. Stevenson II, jointly and severally, in the amount of \$428,459.82. Post-judgment interest shall accrue at the legal rate in accordance with the terms of 28 U.S.C. §1961.

This case remains pending against defendant Patricia Stevenson.

SO ORDERED.

DATED: March 1st, 2016

s/Sandra S. Beckwith

Sandra S. Beckwith, Senior Judge
United States District Court